

2009 DRAFTING REQUEST**Bill**Received: **09/18/2008**Received By: **btradewe**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**By/Representing: **Miner**This file may be shown to any legislator: **NO**Drafter: **btradewe**May Contact: **DNR budget office**

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Miner, BB0022 -

Topic:

Notice of discharge project funding under nonpoint program

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 10/07/2008	wjackson 10/10/2008	mduchek 10/13/2008	_____	lparisi 10/13/2008		
/1	btradewe 01/21/2009	wjackson 01/23/2009	rschluet 01/23/2009	_____	cduerst 01/23/2009		
/2	btradewe 01/28/2009	wjackson 01/28/2009	jfrantze 01/28/2009	_____	sbasford 01/29/2009		
/3	btradewe 01/30/2009	wjackson 01/30/2009	mduchek 01/30/2009	_____	sbasford 01/30/2009		

FE Sent For:

<END>

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/2	btradewe 01/28/2009	wjackson 01/28/2009	jfrantze 01/28/2009	_____	sbasford 01/29/2009		

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1/30

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Jb
1/24

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Notice of discharge project funding under nonpoint program

Instructions:

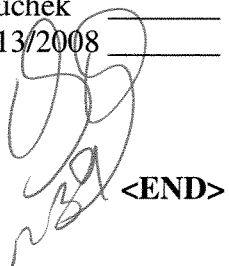
See attached

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/P1	btradewe 10/07/2008	wjackson 10/10/2008	mduchek 10/13/2008		lparisi 10/13/2008		

FE Sent For:

1 wlj 1/23


<END>

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/?	btradewe	/pl wlg 10/10	NO 10/10	ND JF 10/10			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Notice of Discharge Project Funding Language Changes
- Tracking Code: BB0022
- SBO team: Agriculture, Environment and Justice
- SBO analyst: Andrew Miner AM 9/17/08
 - Phone: 266-1103
 - Email: andrew.miner@wisconsin.gov
- Agency acronym: DNR
- Agency number: 370
- Priority (Low, Medium, High): High

Intent: See attached sheet.

- Remove the term "small" from s. 31.385(2)(ag) and repeal the definition for "small dam" in s. 31.385 (1b)(b) so that owners of dams of any size can apply for grants to voluntarily remove their dams.
- Repeal s. 31.385(4), which requires stricter public notification and record keeping requirements than for any other dam project. These requirements increase indirect costs to the applicant and the Department and increase grant processing time for projects.
- Revise s. 31.385, to provide a financial incentive for dam owners to consider dam removal as a viable option by providing full funding for dam removal projects up to the maximum state contribution while continuing to fund repair or reconstruction projects of municipal dams as a 50/50 matching grant up to the maximum state contribution

Notice of Discharge (NOD) Project Funding— The 2007-09 biennial budget bill established a statutory mechanism for the Department to fund a notice of discharge (NOD) project outside of the targeted runoff management (TRM) program. The statutory language has been workable in the short term, but one key change needs to be made in order to maintain a funding source past CY 2009, and several additional changes need to be made to improve the functionality of the NOD program. The Department's requested changes include:

- Modifying s. 20.866(2)(f) so that this source of bonding can also be used for NOD Projects under s. 281.65(4e).
- Allow DNR to provide an NOD grant directly to a landowner so that required cost-share offers can be made in counties that do not want to apply for grants.
- Allow DNR to provide cost-sharing to resolve notices of intent (NOIs), thus allowing resolution of the problem earlier in the notification process.
- Allow DNR to provide cost-sharing to resolve NODs based on groundwater impacts (instead of only surface water impacts, as currently worded).
- To expedite the NOD process, allow for resolution of a NOD site without requiring the Land and Water Conservation Board (LWCB) to approve the cost share rate.
- Restrict economic hardship to situations where the NOD is based on a performance standard or prohibition violation (for consistency with statutory cost-share requirements under s. 281.16, and chs. NR 153 and 243).

A Notice of Discharge (NOD) is a notification by the Department to a livestock owner or operator that their operation is discharging pollutants into the waters of the state. The notice includes specific actions that must be taken to address the problem, the offer of state cost-sharing assistance to implement the actions, and a deadline by which those actions must be completed. The capability to fund NOD projects is important because it provides a shorter time frame for resolving critical pollution problems. These proposed statutory changes will allow the Department to continue funding these NOD projects after the priority watershed program ends in FY 2009. In addition, the changes will help to facilitate cost-share grants to farmers, provide protection to all waters of the state (both surface water and groundwater), and will make economic hardship cost-share policy more consistent with other statutes.

Habitat Assessment Surcharge -- Violations of Chapter 30 (Navigable Waters), 31 (Dams and Bridges Affecting Navigable Waters) and 281 (Wetlands) of the state statutes generally involve the destruction of fish and wildlife habitat. In addition, the state incurs significant expenses when dealing with formal enforcement cases that are ultimately referred to a circuit court. In order to recapture state dollars that have been spent on waterway and wetland violations, the Department proposes several statutory changes that would establish surcharges to fines and forfeitures for the purpose of reimbursing the Departments of Justice and Natural Resources for the cost of investigating, documenting and prosecuting waterway and wetland violations and act as a deterrent for future violations.

The proposed statutory changes are as follows:

1. Amend s. 30.298 to establish a court assessment for the costs that the Department of Justice (DOJ) incurs for investigating and prosecuting a Ch. 30 violation under sections s. 30.03 to s. 30.29 or a Ch. 31 violation under sections s. 31.02 to s. 31.34, including the cost of attorney fees. DOJ shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the Department or the state under this subsection. The costs of investigation and the expenses of the prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Wednesday, October 01, 2008 8:51 AM
To: Tradewell, Becky
Subject: FW: NOD language
Attachments: NOD Proposal--suggested language.doc

Hi Becky,

DNR provided the following suggested language regarding their Notice of Discharge statutory language item. I have a feeling there will be issues getting this worked out, but hopefully this may provide you some guidance. Please let me know if you have any questions. Thanks,
Andrew

From: Neumann, Paul F - DNR
Sent: Wednesday, October 01, 2008 8:46 AM
To: Miner, Andrew - DOA
Subject: NOD language

Andrew,

Here is our suggested NOD language, in case you would like to share that with LRB.

Thanks,
Paul

10/01/2008

Notice of Discharge Proposal—Suggested Language

281.65 (4e) of the statutes is created to read:

281.65 (4e) (a) A governmental unit may request funding from the department, or the department may offer funding directly to a landowner or operator, under this subsection for a project to implement best management practices for animal waste management at an animal feeding operation for which the department has issued a notice of discharge or a notice of intent to issue a notice of discharge under ch. 283.

(b) The department may grant a request or make a cost-share offer under par. (a) if it determines that providing funding under this subsection is necessary to protect fish and aquatic life the waters of the state.

(c) Subsection (8) (d) does not apply to a grant an offer of cost sharing provided by the department directly to a landowner or operator under this subsection.

Provides flexibility for the Dept. in instances where a county prefers not to participate in the issuance of an NOD

Allows DNR to provide cost-share at the point in which an NOI is issued.

Expands protective language to include groundwater.

L 281.65(4)(b)

281.65 (8) (f) of the statutes is amended to read:

281.65 (8) (f) A cost-sharing grant shall equal the percentage of the cost of implementing the best management practice that is determined by the department under sub. (4e) (a) or by the governmental unit submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board except as provided under pars. (gm) and (jm). A cost-sharing grant may not exceed 70% of the cost of implementing the best management practice unless required to meet the economic hardship requirements under par. (gm).

Preserves the rapid response element to an NOD by eliminating the need for the Land and Water Conservation Board to approve an NOD grant.

✓ 281.65 (8) (gm) of the statutes is amended to read:

281.65 (8) (gm) The department's cost-share offer under sub. (4e) (a) or the governmental unit submitting the application under sub. (4c) (a) or (4e) (a) shall exceed the limit under par. (f) in cases of economic hardship as defined by the department by rule, for offers and grants to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a).

Limits the higher cost-share rates for economic hardship to Category II NOD's that violate a state performance standard.

✓ 20.866(2)(tf) of the statutes should be amended to read:

20.866(2)(tf) Natural resources; nonpoint source. From the capital improvement fund, a sum sufficient for the department of natural resources to fund nonpoint source water pollution abatement projects under s. 281.65 (4c) and (4e). The state may contract public debt in an amount not to exceed \$11,000,000 for this purpose.

This enables the Department to fund NOD grants from the TRM program since the Priority Watershed program is sunseting.

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Wednesday, October 01, 2008 9:20 AM
To: Tradewell, Becky
Subject: RE: NOD language

Becky,

I asked DNR about the constitutional issues. FYI, here is how they replied (my question is in red).

1. I remember the big concern when hammering out this draft last time was whether everything was constitutional with regards to bonding for private purposes, protecting the waters of the state, etc. Is the program sure that everything in this proposal passes constitutional muster, such as giving grants directly to landowners and basing them on groundwater impacts (wasn't this an issue with the GL compact – whether or not groundwater was in the public trust)?

You have raised two issues: 1) constitutionality of using bond funds and 2) whether ground water can be protected with these grants.

Constitutionality: The question is not whether bonding revenue (BR) can be used on private lands. We do so all the time for purposes of improving water quality. Our grants are to the County, which uses the funds to reimburse farmers.

Rather, the question is whether BR for use on private lands can be granted directly from the state to a private landowner without going through the county first. Our current program understanding is that DNR can not pay BR directly to a landowner for these BMPs. However, DNR also uses GPR and federal 319 funds to pay for these BMPs. If DNR had a problem site that the County did not want to submit an application for and we had GPR or federal funds available, we would like the option of offering the cost share agreement directly to the farmer. We would not take this step if all we had available was BR. To be able to exercise this option with the appropriate funding source, we need a change to the statute.

Ground Water: NODs are a creature of Chapter NR 243. Under Chapter NR 243, NODs can be issued for Category I, Category II or Category III problems. It is true that Category I problems involve only discharges to navigable waters. However, Category II (Performance Standards Violations) and Category III problems (All other problems) involve discharges to all waters of the state which, by definition, include ground water in addition to a wide variety of surface waters. To be able to address the full range of water resource problems for which NODs are intended, we need to expand the statutory language so we can comprehensively administer the program.

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Wednesday, October 01, 2008 9:06 AM
To: Miner, Andrew - DOA
Subject: RE: NOD language

Andrew,

Thanks.

I think you are right that there will be issues about this draft. As I recall, last session the Capital Finance Office and bond counsel were of the opinion that grants could not be made directly to land owners because of the Internal Improvements Clause.

Becky

From: Miner, Andrew - DOA [mailto:Andrew.Miner@Wisconsin.gov]
Sent: Wednesday, October 01, 2008 8:51 AM
To: Tradewell, Becky

10/01/2008

In 10/7

Wlj

DOA:.....Miner, BB0022 - Notice of discharge project funding under
nonpoint program

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

DNote

DO NOT GEN

1 AN ACT ..., relating to: the budget.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 20.866 (2) (tf) of the statutes is amended to read:

3 20.866 (2) (tf) *Natural resources; nonpoint source.* From the capital
4 improvement fund, a sum sufficient for the department of natural resources to fund
5 nonpoint source water pollution abatement projects under s. 281.65 (4c) and (4e).
6 The state may contract public debt in an amount not to exceed \$11,000,000 for this
7 purpose.

History: 1971 c. 42; 1971 c. 100 s. 23; 1971 c. 125, 211, 215, 236, 307, 330, 336; 1973 c. 90 ss. 148 to 149m, 555m (2); 1973 c. 333; 1975 c. 26, 39, 40, 41, 200, 224, 422; 1977 c. 4, 6; 1977 c. 29 ss. 385 to 387, 1650m (4), 1656 (43); 1977 c. 418; 1979 c. 4; 1979 c. 34 ss. 675a to 677v, 2102 (6) (a), (39) (a), (52) (a); 1979 c. 107, 221; 1981 c. 1 ss. 17, 18, 47; 1981 c. 20, 108, 317, 336; 1983 a. 27; 1983 a. 36 s. 96 (4); 1983 a. 97, 192, 195, 212; 1983 a. 410 s. 2202 (2); 1985 a. 6; 1985 a. 8 ss. 4, 12; 1985 a. 29 ss. 589m to 598, 3202 (23) (c), (26) (a), (53) (a); 1985 a. 77, 120, 332; 1987 a. 27, 295, 298, 399, 403, 409; 1989 a. 31, 46, 107, 122, 219, 336, 359, 366; 1991 a. 39, 51, 269, 309, 324; 1993

a. 2, 16, 98, 115, 213, 343, 377, 413, 437, 453, 485; 1995 a. 27 ss. 1159 to 1168s, 9126 (19), 9145 (1); 1995 a. 40, 57, 60, 113; 1995 a. 216, s. 30m and 9127; 1995 a. 227, 246, 372, 388, 416, 452; 1997 a. 27, 35, 61, 164, 237, 252; 1999 a. 4, 9, 146; 1999 a. 150 s. 672; 1999 a. 184; 2001 a. 12, 16, 103, 109; 2003 a. 33, 64, 91, 129; 2005 a. 1, 22, 25, 102, 300; 2007 a. 5; 2007 a. 20 ss. 582 to 597s, 9121 (6) (a); 2007 a. 226

1 **SECTION 2.** 281.65 (4e) (a) of the statutes is amended to read:

2 **281.65 (4e) (a)** A governmental unit may request funding under this
3 subsection for a project to implement best management practices for animal waste
4 management at an animal feeding operation for which the department has issued a
5 notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20.

6 **SECTION 3.** 281.65 (4e) (b) of the statutes is amended to read:

7 **281.65 (4e) (b)** The department may grant a request under par. (a) if it
8 determines that providing funding under this subsection is necessary to protect fish
9 and aquatic life the waters of the state.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20.

10 **SECTION 4.** 281.65 (4e) (bm) of the statutes is created to read:

11 **281.65 (4e) (bm)** The department may provide a cost-sharing grant under this
12 subsection directly to a landowner, or to an operator of an animal feeding operation,
13 for a project to implement best management practices for animal waste management
14 at an animal feeding operation for which the department has issued a notice of
15 discharge under ch. 283 or a notice of intent to issue a notice of discharge if the
16 department determines that providing funding under this subsection is necessary to
17 protect the waters of the state.

18 **SECTION 5.** 281.65 (4e) (c) of the statutes is amended to read:

19 **281.65 (4e) (c)** Subsection (8) (d) does not apply to a grant provided by the
20 department directly to a landowner or an operator of a farm under this subsection
21 par. (bm).

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20.

* ****NOTE: DNR requested the change in s. 281.65 (4e) (c), but I wonder whether it
should be limited to the situation in which DNR is making a direct grant, given that the
governmental unit requesting funding ~~may~~ ^{need} not be the designated management agency.
See s. 281.65 (4) (b). really

1 SECTION 6. 281.65 (8) (f) of the statutes is amended to read:

2 281.65 (8) (f) A cost-sharing grant shall equal the percentage of the cost of
3 implementing the best management practice that is determined by the department
4 in providing a cost-sharing grant under sub. (4e) (a) or by the governmental unit
5 submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board,
6 except as provided under ~~pars. (gm) and par. (jm)~~ ^{par. (jm)} and except that a cost-sharing
7 grant may not exceed 70% of the cost of implementing the best management practice
8 unless par. (gm) applies.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20.

****NOTE: DNR's proposed language indicated that the change to s. 281.65 (8) (f) allows a rapid response to an NOD by eliminating the need for Land and Water Conservation Board (LWCB) approval of an NOD grant. Note that the change eliminates the requirement for LWCB approval of cost share percentages for all kinds of cost-share grants under s. 281.65.

9 SECTION 7. 281.65 (8) (gm) of the statutes is amended to read:

10 281.65 (8) (gm) The department in making a cost-sharing grant under sub. (4e)
11 (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a)
12 shall exceed the limit under par. (f) in cases of economic hardship, as defined by the
13 department by rule, for a project to achieve compliance with a performance standard
14 or prohibition established under s. 281.16 (3) (a). prohibit

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20.

* ****NOTE: This change would ~~prevent~~ the provision of cost-sharing at more than 70% of cost for every kind of nonpoint project except those needed to obtain compliance with an agricultural performance standard or prohibition under s. 281.16 (3) (a). Is that what is intended?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0280/P1dn

RCT.../...

Wlj

Date

Andrew Miner:

This is a preliminary version of the draft related to providing a nonpoint source program grant for animal waste management when DNR has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge. I have included notes in the draft raising some issues with DNR's proposed language.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0280/P1dn
RCT:wlj:md

October 10, 2008

Andrew Miner:

This is a preliminary version of the draft related to providing a nonpoint source program grant for animal waste management when DNR has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge. I have included notes in the draft raising some issues with DNR's proposed language.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Monday, January 19, 2009 4:48 PM
To: Tradewell, Becky
Subject: FW: LRB NOD Draft 280

Becky,

Please see the comments below from DNR regarding the NOD draft. Please make the suggested changes under Sections 5, 6, and 7 as possible. If you have any questions or concerns, especially with regard to section 6, please let me know. Thanks,
 Andrew

From: Neumann, Paul F - DNR
Sent: Thursday, November 20, 2008 1:39 PM
To: Miner, Andrew - DOA
Subject: FW: LRB NOD Draft

Hi Andrew,

Here are the comments from Watershed on the NOD draft.

Thanks,
 Paul

From: Pfender, John A - DNR
Sent: Thursday, November 20, 2008 1:30 PM
To: Neumann, Paul F - DNR
Subject: LRB NOD Draft

Paul,

Here is what we should convey to Andrew Miner concerning the October 10, 2008 LRB draft of changes to the NOD funding statute.

✓ **Section 1: 20.866 (2) (tf)**

- This is acceptable.

✓ **Section 2: 281.65 (4e) (a)**

- This is acceptable

✓ **Section 3: 281.65 (4e) (b)**

- This is acceptable

✓ **Section 4: 281.65 (4e) (bm)**

- This is acceptable

✓ **Section 5: 281.65 (4e) (c)**

- After reading the drafter's note, DNR has reconsidered its request for a statutory change. We would request that paragraph (4e) (c) of the law remain unchanged from that currently enacted.

01/19/2009

✓ **Section 6: 281.65 (8) (f)** *see later emails*

- DNR's proposal would have deleted the reference to (jm). The drafter's proposal would retain the reference to (jm). It is unclear if this is an oversight on the part of the drafter, or if the drafter insists that the reference to (jm) must remain. The reason that DNR asked that the reference to (jm) be deleted is that it perpetuates an existing statutory contradiction between 281.16 (3) (e), which requires that cost sharing be offered at a minimum of 70% to require compliance with standards and prohibitions, and 281.65 (8) (jm) which restricts the amount of cost share the DNR can offer to 50% of that amount. We need to have the reference to (jm) deleted so that we can use TRM and NOD funds under 281.65 to make an adequate offer of cost share for unresolved critical sites that need to meet standards and prohibitions.
- If the drafter disagrees with our interpretation of the statute, we would appreciate a chance to discuss this further.

✓ **Section 7: 281.65 (8) (gm)**

- After reading the drafter's note, DNR would like to modify its proposal. What we want to achieve is to maintain our existing economic hardship policy without requiring that it be extended to all types of management problems subject to NODs under Chapter 243. Although we are required to consider economic hardship for sites that are issued NODs for performance standards violations (Category II NODs), we are not required under law to provide economic hardship for other types of problems (Category I and III NODs) for which we could issue a NOD.
- We would like to propose the following language to provide us this flexibility without creating the problem to which the drafter's note alludes:

281.65 (8) (gm) The department in making a cost-sharing grant under sub. (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a) shall ~~may~~ exceed the limit under par. (f) in cases of economic hardship, as defined by the department by ~~rule~~, rule. ~~for~~ For a project to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost sharing for economic hardship in accordance with s. 281.16(3)(e).

John Pfender, WT/3
Runoff Management Section
Wisconsin Department of Natural Resources
phone: (608) 266-9266
fax: (608) 267-2800

Tradewell, Becky

From: Tradewell, Becky
Sent: Tuesday, January 20, 2009 9:58 AM
To: Miner, Andrew - DOA
Subject: RE: LRB NOD Draft 280

Andrew,

Regarding section 6: Just deleting the reference to par. (jm) in par. (f) does not change the applicability of par. (jm) because par. (jm) begins with "Notwithstanding par. (f)". It sounds to me as though DNR may not want par. (jm) to apply at all, in which case it must be repealed. If they only want to narrow the applicability of par. (jm), I need to know in which situations it should apply and in which situations it should not apply.

As you know, we will need a very prompt response in order to complete the draft in time for inclusion in the budget.

Becky Tradewell

From: Miner, Andrew - DOA [mailto:Andrew.Miner@Wisconsin.gov]
Sent: Monday, January 19, 2009 4:48 PM
To: Tradewell, Becky
Subject: FW: LRB NOD Draft 280

Becky,

Please see the comments below from DNR regarding the NOD draft. Please make the suggested changes under Sections 5, 6, and 7 as possible. If you have any questions or concerns, especially with regard to section 6, please let me know. Thanks,

Andrew

From: Neumann, Paul F - DNR
Sent: Thursday, November 20, 2008 1:39 PM
To: Miner, Andrew - DOA
Subject: FW: LRB NOD Draft

Hi Andrew,

Here are the comments from Watershed on the NOD draft.

Thanks,
Paul

From: Pfender, John A - DNR
Sent: Thursday, November 20, 2008 1:30 PM
To: Neumann, Paul F - DNR
Subject: LRB NOD Draft

Paul,

Here is what we should convey to Andrew Miner concerning the October 10, 2008 LRB draft of changes to the NOD funding statute.

01/20/2009

Section 1: 20.866 (2) (tf)

- This is acceptable.

Section 2: 281.65 (4e) (a)

- This is acceptable

Section 3: 281.65 (4e) (b)

- This is acceptable

Section 4: 281.65 (4e) (bm)

- This is acceptable

Section 5: 281.65 (4e) (c)

- After reading the drafter's note, DNR has reconsidered its request for a statutory change. We would request that paragraph (4e) (c) of the law remain unchanged from that currently enacted.

Section 6: 281.65 (8) (f)

- DNR's proposal would have deleted the reference to (jm). The drafter's proposal would retain the reference to (jm). It is unclear if this is an oversight on the part of the drafter, or if the drafter insists that the reference to (jm) must remain. The reason that DNR asked that the reference to (jm) be deleted is that it perpetuates an existing statutory contradiction between 281.16 (3) (e), which requires that cost sharing be offered at a minimum of 70% to require compliance with standards and prohibitions, and 281.65 (8) (jm) which restricts the amount of cost share the DNR can offer to 50% of that amount. We need to have the reference to (jm) deleted so that we can use TRM and NOD funds under 281.65 to make an adequate offer of cost share for unresolved critical sites that need to meet standards and prohibitions.
- If the drafter disagrees with our interpretation of the statute, we would appreciate a chance to discuss this further.

Section 7: 281.65 (8) (gm)

- After reading the drafter's note, DNR would like to modify its proposal. What we want to achieve is to maintain our existing economic hardship policy without requiring that it be extended to all types of management problems subject to NODs under Chapter 243. Although we are required to consider economic hardship for sites that are issued NODs for performance standards violations (Category II NODs), we are not required under law to provide economic hardship for other types of problems (Category I and III NODs) for which we could issue a NOD.
- We would like to propose the following language to provide us this flexibility without creating the problem to which the drafter's note alludes:

281.65 (8) (gm) The department in making a cost-sharing grant under sub. (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a) ~~shall~~ may exceed the limit under par. (f) in cases of economic hardship, as defined by the department by ~~rule;~~ rule. ~~for~~ For a project to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost sharing for economic hardship in accordance with s. 281.16(3)(e).

John Pfender, WT/3
Runoff Management Section
Wisconsin Department of Natural Resources
phone: (608) 266-9266
fax: (608) 267-2800

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Wednesday, January 21, 2009 9:03 AM
To: Tradewell, Becky
Subject: FW: LRB NOD Draft 280

Becky – Please see the email from John Pfender below. DNR wants to phase out (jm) after 12/31/09. If this makes sense to you, please make the change. Let me know if there are any concerns. Thanks,
Andrew

From: Neumann, Paul F - DNR
Sent: Wednesday, January 21, 2009 8:58 AM
To: Miner, Andrew - DOA
Subject: FW: LRB NOD Draft 280

Andrew,

See comment below from John Pfender in Watershed Management and Robin Nyffler in Legal Services. Let us know if you have any more questions or concerns.

Thanks,
Paul

From: Pfender, John A - DNR
Sent: Wednesday, January 21, 2009 8:55 AM
To: Neumann, Paul F - DNR
Subject: RE: LRB NOD Draft 280

Paul,

I discussed this with Robin Nyffeler. I think the best thing to do is to phase out (jm). It only needs to stay in place through December 31, 2009. That is the last date when a cost share agreement can be signed under NR 120. Let me know if you need anything else.

John

From: Neumann, Paul F - DNR
Sent: Tuesday, January 20, 2009 10:07 AM
To: Pfender, John A - DNR
Cc: Rasmussen, Russell A - DNR
Subject: FW: LRB NOD Draft 280

Hi John,

See comment below from LRB regarding Section 6. Looks like we need to get back to them fairly soon, too.

Thanks,
Paul

01/21/2009

From: Miner, Andrew - DOA
Sent: Tuesday, January 20, 2009 10:00 AM
To: Neumann, Paul F - DNR
Subject: FW: LRB NOD Draft 280

Hi Paul – please see Becky's note below regarding the NOD draft. We'll need a prompt response to get the changes into the draft. Thanks - Andrew

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Tuesday, January 20, 2009 9:58 AM
To: Miner, Andrew - DOA
Subject: RE: LRB NOD Draft 280

Andrew,

Regarding section 6: Just deleting the reference to par. (jm) in par. (f) does not change the applicability of par. (jm) because par. (jm) begins with "Notwithstanding par. (f)". It sounds to me as though DNR may not want par. (jm) to apply at all, in which case it must be repealed. If they only want to narrow the applicability of par. (jm), I need to know in which situations it should apply and in which situations it should not apply.

As you know, we will need a very prompt response in order to complete the draft in time for inclusion in the budget.

Becky Tradewell

From: Miner, Andrew - DOA [mailto:Andrew.Miner@Wisconsin.gov]
Sent: Monday, January 19, 2009 4:48 PM
To: Tradewell, Becky
Subject: FW: LRB NOD Draft 280

Becky,

Please see the comments below from DNR regarding the NOD draft. Please make the suggested changes under Sections 5, 6, and 7 as possible. If you have any questions or concerns, especially with regard to section 6, please let me know. Thanks,
Andrew

From: Neumann, Paul F - DNR
Sent: Thursday, November 20, 2008 1:39 PM
To: Miner, Andrew - DOA
Subject: FW: LRB NOD Draft

Hi Andrew,

Here are the comments from Watershed on the NOD draft.

Thanks,
Paul

nder, John A - DNR
sday, November 20, 2008 1:30 PM
ann, Paul F - DNR
LRB NOD Draft

01/21/2009

Paul,

Here is what we should convey to Andrew Miner concerning the October 10, 2008 LRB draft of changes to the NOD funding statute.

Section 1: 20.866 (2) (tf)

- This is acceptable.

Section 2: 281.65 (4e) (a)

- This is acceptable

Section 3: 281.65 (4e) (b)

- This is acceptable

Section 4: 281.65 (4e) (bm)

- This is acceptable

Section 5: 281.65 (4e) (c)

- After reading the drafter's note, DNR has reconsidered its request for a statutory change. We would request that paragraph (4e) (c) of the law remain unchanged from that currently enacted.

Section 6: 281.65 (8) (f)

- DNR's proposal would have deleted the reference to (jm). The drafter's proposal would retain the reference to (jm). It is unclear if this is an oversight on the part of the drafter, or if the drafter insists that the reference to (jm) must remain. The reason that DNR asked that the reference to (jm) be deleted is that it perpetuates an existing statutory contradiction between 281.16 (3) (e), which requires that cost sharing be offered at a minimum of 70% to require compliance with standards and prohibitions, and 281.65 (8) (jm) which restricts the amount of cost share the DNR can offer to 50% of that amount. We need to have the reference to (jm) deleted so that we can use TRM and NOD funds under 281.65 to make an adequate offer of cost share for unresolved critical sites that need to meet standards and prohibitions.
- If the drafter disagrees with our interpretation of the statute, we would appreciate a chance to discuss this further.

Section 7: 281.65 (8) (gm)

- After reading the drafter's note, DNR would like to modify its proposal. What we want to achieve is to maintain our existing economic hardship policy without requiring that it be extended to all types of management problems subject to NODs under Chapter 243. Although we are required to consider economic hardship for sites that are issued NODs for performance standards violations (Category II NODs), we are not required under law to provide economic hardship for other types of problems (Category I and III NODs) for which we could issue a NOD.
- We would like to propose the following language to provide us this flexibility without creating the problem to which the drafter's note alludes:

281.65 (8) (gm) The department in making a cost-sharing grant under sub. (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a) ~~shall~~ may exceed the limit under par. (f) in cases of economic hardship, as defined by the department by ~~rule~~, rule. ~~for~~ For a project to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost sharing for economic hardship in accordance with s. 281.16(3)(e).

John Pfender, WT/3
Runoff Management Section
Wisconsin Department of Natural Resources

phone: (608) 266-9266
fax: (608) 267-2800



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0280/71

RCT:wlj:md

IN 1/21

Stays

VMY

DOA:.....Miner, BB0022 - Notice of discharge project funding under nonpoint program

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT** ^{Do Not Gen} relating to: the budget.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 20.866 (2) (tf) of the statutes is amended to read:

3 20.866 (2) (tf) *Natural resources; nonpoint source.* From the capital
4 improvement fund, a sum sufficient for the department of natural resources to fund
5 nonpoint source water pollution abatement projects under s. 281.65 (4c) and (4e).
6 The state may contract public debt in an amount not to exceed \$11,000,000 for this
7 purpose.

8 **SECTION 2.** 281.65 (4e) (a) of the statutes is amended to read:

1 281.65 (4e) (a) A governmental unit may request funding under this subsection
2 for a project to implement best management practices for animal waste management
3 at an animal feeding operation for which the department has issued a notice of
4 discharge under ch. 283 or a notice of intent to issue a notice of discharge.

5 **SECTION 3.** 281.65 (4e) (b) of the statutes is amended to read:

6 281.65 (4e) (b) The department may grant a request under par. (a) if it
7 determines that providing funding under this subsection is necessary to protect fish
8 and aquatic life the waters of the state.

9 **SECTION 4.** 281.65 (4e) (bm) of the statutes is created to read:

10 281.65 (4e) (bm) The department may provide a cost-sharing grant under this
11 subsection directly to a landowner, or to an operator of an animal feeding operation,
12 for a project to implement best management practices for animal waste management
13 at an animal feeding operation for which the department has issued a notice of
14 discharge under ch. 283 or a notice of intent to issue a notice of discharge if the
15 department determines that providing funding under this subsection is necessary to
16 protect the waters of the state.

17 **SECTION 5.** 281.65 (4e) (c) of the statutes is amended to read:

18 281.65 (4e) (c) Subsection (8) (d) does not apply to a grant provided by the
19 department directly to a landowner or an operator of a farm under this subsection
20 par. (bm).

****NOTE: DNR requested the change in s. 281.65 (4e) (c), but I wonder whether it really should be limited to the situation in which DNR is making a direct grant, given that the governmental unit requesting funding need not be the designated management agency. See s. 281.65 (4) (b).

21 **SECTION 6.** 281.65 (8) (f) of the statutes is amended to read:

22 281.65 (8) (f) A cost-sharing grant shall equal the percentage of the cost of
23 implementing the best management practice that is determined by the department

1 in providing a cost-sharing grant under sub. (4e) (a) or by the governmental unit
2 submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board,
3 except as provided under pars. (gm) and par. (jm) and except that a cost-sharing
4 grant may not exceed 70% of the cost of implementing the best management practice
5 unless par. (gm) applies.

***NOTE: DNR's proposed language indicated that the change to s. 281.65 (8) (f) allows a rapid response to an NOD by eliminating the need for Land and Water Conservation Board (LWCB) approval of a NOD grant. Note that the change eliminates the requirement for LWCB approval of cost-share percentages for all kinds of cost-share grants under s. 281.65.

6 **SECTION 7.** 281.65 (8) (gm) of the statutes is amended to read:

7 281.65 (8) (gm) The department in making a cost-sharing grant under sub. (4e)
8 (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a)
9 shall exceed the limit under par. (f) in cases of economic hardship, as defined by the
10 department by rule, for a project to achieve compliance with a performance standard
11 or prohibition established under s. 281.16 (3) (a). Insert 3-11✓

****NOTE: This change would prohibit the provision of cost-sharing at more than 70% of cost for every kind of nonpoint project except those needed to obtain compliance with an agricultural performance standard or prohibition under s. 281.16 (3) (a). Is that what is intended?

(END)

1 **Analysis insert**

✓ **ENVIRONMENT**

✓ **WATER QUALITY**

Under current law, DNR, in conjunction with DATCP and local governmental units, administers a program to provide financial assistance for projects to reduce water pollution from nonpoint (diffuse) sources. Local governmental units annually apply for cost-sharing grants from DNR for new nonpoint source projects. A project qualifies for funding only if it is in a target area. An area may be a target area if, for example, it contains a livestock operation that has received a notice from DNR that the operation is discharging a significant amount of pollution to the waters of this state (a notice of discharge). DNR annually ranks all of the eligible applications based on specified criteria, including the extent to which the project will result in the attainment of water quality objectives, and then DNR selects projects to receive cost-sharing grants. This process is sometimes referred to as the targeted runoff management grant process.

This bill authorizes DNR to provide a cost-sharing grant, outside of the targeted runoff management grant process, for animal waste management. DNR may provide a grant directly to the owner or operator of a livestock operation who has received a notice of discharge, or a notice of intent to issue a notice of discharge, from DNR if DNR determines that providing a grant outside of that process is necessary to protect the waters of the state.

2 **Insert 3-11**

3 ~~no P~~ the department shall provide cost-sharing of 70% of the cost of compliance or
4 70% to 90% of the cost of compliance in case of economic hardship

5 **SECTION 1.** 281.65 (8) (jm) of the statutes is repealed.

6 **SECTION 9437. Effective dates; Natural Resources.**

7 (1) NONPOINT SOURCE POLLUTION PROGRAM COST SHARING. The treatment of
8 section 281.65 (8) (jm) of the statutes takes effect on January 1, 2010.

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Tuesday, January 27, 2009 3:18 PM
To: Tradewell, Becky
Subject: FW: LRB Draft: 09-0280/1 Notice of discharge project funding under nonpoint program

Becky – If it's not too late and this is indeed a simple change, please make the suggested change from DNR under 1) to the NOD draft. Whether to include their summary language in 2) is, of course, up to you. Let me know if there are any problems. Thanks,
Andrew

From: Neumann, Paul F - DNR
Sent: Tuesday, January 27, 2009 3:14 PM
To: Miner, Andrew - DOA
Subject: FW: LRB Draft: 09-0280/1 Notice of discharge project funding under nonpoint program

Andrew,

If it is not too late, John Pfender has a couple of minor suggestions for the NOD draft:

1) 281.65(8)(gm) needs 4 words added to the beginning of the last sentence. The reason is that we want to be clear that these funding requirements only apply to situations where we have already decided to issue a grant. We do not want to create any new requirements under the law to initiate cost sharing for regulatory compliance.

To accomplish this, we suggest adding the following 4 words to the beginning of the last sentence of 281.65(8) (gm):

When making a grant for projects to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost-sharing of 70% of the cost of compliance or 70% to 90% of the cost of compliance in cases of economic hardship.

2) It's not related to the proposed statutory language, but we suggest editing the second paragraph of the plain language summary to read as follows:

This bill authorizes DNR to provide a cost-sharing grant for animal waste management, outside the targeted runoff management grant process, if DNR determines that providing a grant outside that process is necessary to protect waters of the state. DNR may make grant funds available to the owner or operator of a livestock operation who has received a notice of discharge, or a notice of intent to issue a notice of discharge from DNR. DNR may make the grant funds available by issuing a grant to a governmental unit that will administer the funds to the farmer, or by issuing a grant directly to the farmer when necessary.

Thanks,
Paul

From: Neumann, Paul F - DNR
Sent: Friday, January 23, 2009 3:50 PM
To: Pfender, John A - DNR; Nyffeler, Robin T - DNR
Subject: FW: LRB Draft: 09-0280/1 Notice of discharge project funding under nonpoint program

John and Robin,

Latest LRB draft for NOD. Let me know if you have any concerns.

Thanks,
Paul

From: Miner, Andrew - DOA
Sent: Friday, January 23, 2009 3:49 PM
To: Neumann, Paul F - DNR
Subject: FW: LRB Draft: 09-0280/1 Notice of discharge project funding under nonpoint program

Hi Paul – here is a new version of the NOD draft. Hopefully we can consider it final. Please take a look and let me know if it meets your intent. Thanks - Andrew

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]
Sent: Friday, January 23, 2009 3:29 PM
To: Miner, Andrew - DOA
Cc: Steinmetz, Jana D - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0280/1 Notice of discharge project funding under nonpoint program

Following is the PDF version of draft 09-0280/1.

IN 1/28

(stays) RMR

DOA:.....Miner, BB0022 - Notice of discharge project funding under nonpoint program

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Under current law, DNR, in conjunction with DATCP and local governmental units, administers a program to provide financial assistance for projects to reduce water pollution from nonpoint (diffuse) sources. Local governmental units annually apply for cost-sharing grants from DNR for new nonpoint source projects. A project qualifies for funding only if it is in a target area. An area may be a target area if, for example, it contains a livestock operation that has received a notice from DNR that the operation is discharging a significant amount of pollution to the waters of this state (a notice of discharge). DNR annually ranks all of the eligible applications based on specified criteria, including the extent to which the project will result in the attainment of water quality objectives, and then DNR selects projects to receive cost-sharing grants. This process is referred to as the targeted runoff management grant process.

Analysis
insert
→ This bill ^{also} authorizes DNR to provide a cost-sharing grant, outside of the targeted runoff management grant process, for animal waste management. DNR may provide a grant directly to the owner or operator of a livestock operation who has received a notice of discharge, or a notice of intent to issue a notice of discharge, from

DNR if DNR determines that providing a grant outside of that process is necessary to protect the waters of the state. *the bill also expands the capital fund*

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.866 (2) (tf) of the statutes is amended to read:

2 20.866 (2) (tf) *Natural resources; nonpoint source.* From the capital
3 improvement fund, a sum sufficient for the department of natural resources to fund
4 nonpoint source water pollution abatement projects under s. 281.65 (4c) and (4e).
5 The state may contract public debt in an amount not to exceed \$11,000,000 for this
6 purpose.

7 **SECTION 2.** 281.65 (4e) (a) of the statutes is amended to read:

8 281.65 (4e) (a) A governmental unit may request funding under this subsection
9 for a project to implement best management practices for animal waste management
10 at an animal feeding operation for which the department has issued a notice of
11 discharge under ch. 283 or a notice of intent to issue a notice of discharge.

12 **SECTION 3.** 281.65 (4e) (b) of the statutes is amended to read:

13 281.65 (4e) (b) The department may grant a request under par. (a) if it
14 determines that providing funding under this subsection is necessary to protect fish
15 and aquatic life the waters of the state.

16 **SECTION 4.** 281.65 (4e) (bm) of the statutes is created to read:

17 281.65 (4e) (bm) The department may provide a cost-sharing grant under this
18 subsection directly to a landowner, or to an operator of an animal feeding operation,
19 for a project to implement best management practices for animal waste management
20 at an animal feeding operation for which the department has issued a notice of
21 discharge under ch. 283 or a notice of intent to issue a notice of discharge if the

1 department determines that providing funding under this subsection is necessary to
2 protect the waters of the state.

3 **SECTION 5.** 281.65 (8) (f) of the statutes is amended to read:

4 281.65 (8) (f) A cost-sharing grant shall equal the percentage of the cost of
5 implementing the best management practice that is determined by the department
6 in providing a cost-sharing grant under sub. (4e) (a) or by the governmental unit
7 submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board,
8 except as provided under pars. (gm) and (jm) and, except that a cost-sharing grant
9 may not exceed 70% of the cost of implementing the best management practice unless
10 par. (gm) applies.

****NOTE: DNR's proposed language indicated that the change to s. 281.65 (8) (f) allows a rapid response to an NOD by eliminating the need for Land and Water Conservation Board (LWCB) approval of a NOD grant. Note that the change eliminates the requirement for LWCB approval of cost-share percentages for all kinds of cost-share grants under s. 281.65.

11 **SECTION 6.** 281.65 (8) (gm) of the statutes is amended to read:

12 281.65 (8) (gm) The ^{providing}department in ~~making~~ a cost-sharing grant under sub. (4e)
13 (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a)
14 shall ~~may~~ exceed the limit under par. (f) in ^{strike on case}cases of economic hardship, as defined by
15 the department by rule. ^aFor projects to achieve compliance with a performance
16 standard or prohibition established under s. 281.16 (3) (a), the department shall
17 provide cost-sharing of 70% of the cost of compliance or 70% to 90% of the cost of
18 compliance in ^{cases}cases of economic hardship.

19 **SECTION 7.** 281.65 (8) (jm) of the statutes is repealed.

20 **SECTION 9437. Effective dates; Natural Resources.**

Woff
= In ^{providing}making a grant

1 (1) NONPOINT SOURCE POLLUTION PROGRAM COST SHARING. The treatment of
2 section 281.65 (8) (jm) of the statutes takes effect on January 1, 2010.

3 (END)

-0280/2

Analysis insert

(4) Current law also authorizes DNR to provide a cost-
 sharing grant^Δ outside of the targeted runoff management
 process^Δ to a local governmental unit for animal waste
 management at a livestock operation for which DNR
 has issued a notice of discharge if DNR determines
 that providing a grant outside of that process is
 necessary to protect fish and aquatic life. This bill
 broadens that authority by allowing DNR to provide
a grant to a local governmental unit ^{also ↓} recovering livestock
operations that have received a notice of intent to issue
a notice of discharge and allowing DNR to provide a
grant to the local governmental unit
if it is outside of the targeted runoff management
process if ^Δ DNR determines that is necessary to protect the
 waters of the state.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0280/4

RCT:wlj:ff

stays

3
RMV

In 1/30

DOA:.....Miner, BB0022 - Notice of discharge project funding under nonpoint program

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

date

Do Not Gen

1

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Under current law, DNR, in conjunction with DATCP and local governmental units, administers a program to provide financial assistance for projects to reduce water pollution from nonpoint (diffuse) sources. Local governmental units annually apply for cost-sharing grants from DNR for new nonpoint source projects. A project qualifies for funding only if it is in a target area. An area may be a target area if, for example, it contains a livestock operation that has received a notice from DNR that the operation is discharging a significant amount of pollution to the waters of this state (a notice of discharge). DNR annually ranks all of the eligible applications based on specified criteria, including the extent to which the project will result in the attainment of water quality objectives, and then DNR selects projects to receive cost-sharing grants. This process is referred to as the targeted runoff management grant process.

Current law also authorizes DNR to provide a cost-sharing grant, outside of the targeted runoff management grant process, to a local governmental unit for animal waste management at a livestock operation for which DNR has issued a notice of discharge if DNR determines that providing a grant outside of that process is

necessary to protect fish and aquatic life. This bill broadens that authority by also covering livestock operations for which DNR has issued a notice of intent to issue a notice of discharge and allowing DNR to provide a grant to a local governmental unit if DNR determines that is necessary to protect the waters of the state.

This bill also authorizes DNR to provide a cost-sharing grant, outside of the targeted runoff management grant process, directly to the owner or operator of a livestock operation who has received a notice of discharge, or a notice of intent to issue a notice of discharge, if DNR determines that providing a grant outside of that process is necessary to protect the waters of the state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.866 (2) (tf) of the statutes is amended to read:

20.866 (2) (tf) *Natural resources; nonpoint source.* From the capital improvement fund, a sum sufficient for the department of natural resources to fund nonpoint source water pollution abatement projects under s. 281.65 (4c) and (4e). The state may contract public debt in an amount not to exceed \$11,000,000 for this purpose.

SECTION 2. 281.65 (4e) (a) of the statutes is amended to read:

281.65 (4e) (a) A governmental unit may request funding under this subsection for a project to implement best management practices for animal waste management at an animal feeding operation for which the department has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge.

SECTION 3. 281.65 (4e) (b) of the statutes is amended to read:

281.65 (4e) (b) The department may grant a request under par. (a) if it determines that providing funding under this subsection is necessary to protect fish and aquatic life the waters of the state.

SECTION 4. 281.65 (4e) (bm) of the statutes is created to read:

1 281.65 (4e) (bm) The department may provide a cost-sharing grant under this
2 subsection directly to a landowner, or to an operator of an animal feeding operation,
3 for a project to implement best management practices for animal waste management
4 at an animal feeding operation for which the department has issued a notice of
5 discharge under ch. 283 or a notice of intent to issue a notice of discharge if the
6 department determines that providing funding under this subsection is necessary to
7 protect the waters of the state.

8 **SECTION 5.** 281.65 (8) (f) of the statutes is amended to read:

9 281.65 (8) (f) A cost-sharing grant shall equal the percentage of the cost of
10 implementing the best management practice that is determined by the department
11 in providing a cost-sharing grant under sub. (4e) (a) or by the governmental unit
12 submitting the application under sub. (4c) (a) or (4e) (a) ~~and is approved by the board,~~
13 ~~except as provided under pars. (gm) and (jm) and,~~ except that a cost-sharing grant
14 may not exceed 70% of the cost of implementing the best management practice unless
15 par. (gm) applies.

Insert
3-15
16 **SECTION 6.** 281.65 (8) (gm) of the statutes is amended to read:

17 281.65 (8) (gm) The department in providing a cost-sharing grant under sub.
18 (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e)
19 (a) shall may exceed the limit under par. (f) in cases case of economic hardship, as
20 defined by the department by rule. In providing a grant for a project to achieve
21 compliance with a performance standard or prohibition established under s. 281.16
22 (3) (a), the department shall provide cost-sharing of 70% of the cost of compliance
23 or 70% to 90% of the cost of compliance in case of economic hardship.

24 **SECTION 7.** 281.65 (8) (jm) of the statutes is repealed.

25 **SECTION 9437. Effective dates; Natural Resources.**

3 (END)

Note ✓

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB

-0289/3

Insert 3-15

28665(8)(f)

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with
the following LRB numbers: ↓

(12)

0289/1 - 1158/10

***NOTE: This is reconciled s. . This SECTION has been affected by drafts with
the following LRB numbers:

***NOTE: This is reconciled s. . This SECTION has been affected by drafts with
the following LRB numbers:

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the following LRB numbers:

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the following LRB numbers:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0280/3dn
RCT.....

Wlj

Date

1/2 2 1 1/2
This draft reconciles LRB-0280, LRB-0766 and LRB-1156. All of these drafts should continue to appear in the compiled bill.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0280/3dn
RCT:wlj:md

January 30, 2009

This draft reconciles LRB-0280/2, LRB-0776/1 and LRB-1156/2. All of these drafts should continue to appear in the compiled bill.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0280/3

RCT:wlj:md

DOA:.....Miner, BB0022 - Notice of discharge project funding under nonpoint program

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Under current law, DNR, in conjunction with DATCP and local governmental units, administers a program to provide financial assistance for projects to reduce water pollution from nonpoint (diffuse) sources. Local governmental units annually apply for cost-sharing grants from DNR for new nonpoint source projects. A project qualifies for funding only if it is in a target area. An area may be a target area if, for example, it contains a livestock operation that has received a notice from DNR that the operation is discharging a significant amount of pollution to the waters of this state (a notice of discharge). DNR annually ranks all of the eligible applications based on specified criteria, including the extent to which the project will result in the attainment of water quality objectives, and then DNR selects projects to receive cost-sharing grants. This process is referred to as the targeted runoff management grant process.

Current law also authorizes DNR to provide a cost-sharing grant, outside of the targeted runoff management grant process, to a local governmental unit for animal waste management at a livestock operation for which DNR has issued a notice of discharge if DNR determines that providing a grant outside of that process is

necessary to protect fish and aquatic life. This bill broadens that authority by also covering livestock operations for which DNR has issued a notice of intent to issue a notice of discharge and allowing DNR to provide a grant to a local governmental unit if DNR determines that is necessary to protect the waters of the state.

This bill also authorizes DNR to provide a cost-sharing grant, outside of the targeted runoff management grant process, directly to the owner or operator of a livestock operation who has received a notice of discharge, or a notice of intent to issue a notice of discharge, if DNR determines that providing a grant outside of that process is necessary to protect the waters of the state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 281.65 (4e) (a) of the statutes is amended to read:

2 281.65 (4e) (a) A governmental unit may request funding under this subsection
3 for a project to implement best management practices for animal waste management
4 at an animal feeding operation for which the department has issued a notice of
5 discharge under ch. 283 or a notice of intent to issue a notice of discharge.

6 **SECTION 2.** 281.65 (4e) (b) of the statutes is amended to read:

7 281.65 (4e) (b) The department may grant a request under par. (a) if it
8 determines that providing funding under this subsection is necessary to protect fish
9 and aquatic life the waters of the state.

10 **SECTION 3.** 281.65 (4e) (bm) of the statutes is created to read:

11 281.65 (4e) (bm) The department may provide a cost-sharing grant under this
12 subsection directly to a landowner, or to an operator of an animal feeding operation,
13 for a project to implement best management practices for animal waste management
14 at an animal feeding operation for which the department has issued a notice of
15 discharge under ch. 283 or a notice of intent to issue a notice of discharge if the
16 department determines that providing funding under this subsection is necessary to
17 protect the waters of the state.

SECTION 4. 281.65 (8) (f) of the statutes is amended to read:

281.65 (8) (f) A cost-sharing grant shall equal the percentage of the cost of implementing the best management practice that is determined by the department in providing a cost-sharing grant under sub. (4e) (a) or by the governmental unit submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board, except as provided under pars. (gm) and (jm) and, except that a cost-sharing grant may not exceed 70% of the cost of implementing the best management practice unless par. (gm) applies.

****NOTE: This is reconciled s. 281.65 (8) (f). This SECTION has been affected by drafts with the following LRB numbers: -0280/2, -1156/2.

SECTION 5. 281.65 (8) (gm) of the statutes is amended to read:

281.65 (8) (gm) The department in providing a cost-sharing grant under sub. (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a) shall ~~may~~ exceed the limit under par. (f) in cases case of economic hardship, as defined by the department by rule. In providing a grant for a project to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost-sharing of 70% of the cost of compliance or 70% to 90% of the cost of compliance in case of economic hardship.

SECTION 6. 281.65 (8) (jm) of the statutes is repealed.

SECTION 9437. Effective dates; Natural Resources.

(1) **NONPOINT SOURCE POLLUTION PROGRAM COST SHARING.** The treatment of section 281.65 (8) (jm) of the statutes takes effect on January 1, 2010.

(END)